

Service Date: August 24, 1994

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER Of the Application)	UTILITY DIVISION
of Lone Mountain Springs Water)	
Company for Authority to Increase)	DOCKET NO. 92.9.55
Rates and Charges for Water Service)	
to its Big Sky, Montana Customers.)	ORDER NO. 5660f

FINAL ORDER

APPEARANCES

FOR THE APPLICANT:

Thomas R. Anacker, Attorney at Law, Kirwan and Barrett, 215
West Mendenhall, Bozeman, Montana 59771-1348

FOR THE INTERVENORS:

Mary Wright, Staff Attorney, Montana Consumer Counsel, 34
West 6th Avenue, P.O. Box 201703, Helena, Montana 59620-1703

J. Robert Planalp, Attorney at Law, Landoe, Brown,
Planalp & Braaksma, Box 1, Bozeman, Montana, 59771-
0001. Representing Big Sky Owners Association.

Michael C. Coil, Attorney at Law, 125 West Mendenhall,
Bozeman, Montana 59715. Representing West Fork Proper-
ties.

FOR THE COMMISSION:

Tim Sweeney, Staff Attorney, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

Robin McHugh, Chief Legal Counsel, 1701 Prospect Ave-
nue, P.O. Box 202601, Helena, Montana 59620-2601

Ron Woods, Rate Analyst, 1701 Prospect Avenue, P.O. Box
202601, Helena, Montana 59620-2601

BEFORE:

BOB ANDERSON, Chairman
DAVE FISHER, Commissioner
NANCY MCCAFFREE, Commissioner
BACKGROUND

1. On September 30, 1992 Lone Mountain Springs Water Company (Applicant or LMS) filed an application with the Montana Public Service Commission (Commission) for authority to permanently increase water rates for its Big Sky, Montana customers by approximately 250 percent which constitutes an annual revenue increase of \$283,825.

2. Concurrent with this filing for a permanent increase in rates, LMS filed an application for interim rate relief. LMS requested an interim increase in rates of 250 percent, equalling a revenue increase of \$283,825 or 100 percent of the proposed permanent increase.

3. On October 29, 1992, the Commission, having considered the testimony and exhibits submitted by the Applicant in support of its interim rate application, issued Order No. 5660 granting LMS interim relief in the amount of \$75,180.

4. On November 9, 1992 LMS filed a request for reconsideration by the Commission of its Order No. 5660 or, in the alternative, a public hearing on the matter. The Applicant alleged in

this request that it had demonstrated by documentation the need for the full amount requested.

5. On December 24, 1992 the Commission issued Order No. 5660a on LMS's request for reconsideration. This order allowed LMS to earn a return on the original cost-depreciated value of plant-in-service and increased LMS's already authorized interim rate increase by \$48,741.

6. On January 4-5, 1994 a properly noticed public hearing was held on the application for rate increase at Buck's T-4, Big Sky, Montana. For the convenience of the public an evening session was held January 4, 1994, at the same location.

FINDINGS OF FACT

7. At the public hearing the Applicant presented the testimony and Exhibits of:

Don Cox, Certified Public Accountant, Anderson, Zuermuehlen and Company,

John Kircher, President, LMS,

Tom Rothschiller, Accountant, LMS,

Terry Thelkeld, Engineer, LMS.

8. West Fork Properties, Inc. (WFP) and Big Sky Owners Association presented the testimony and exhibits of:

Shelly Chaney, Gallatin County Clerk and Recorder, appearing for WFP,

Jan Mack, Water Rights Specialist, appearing for WFP,

Ken McBride, President, WFP,

Harold Maben, Director, Big Sky County Water and Sewer District, appearing for WFP,

C. J. Hanan, Director, Hidden Village Condominium Association, appearing for WFP,

Bill Murdock, Executive Administrator, Big Sky Owners Association,

Bob Biggerstaff, Vice Chairman, Big Sky Owners Association.

9. The Montana Consumer Counsel (MCC) presented the expert testimony of Frank Buckley, its Rate Analyst. The MCC also sponsored the testimony of seven public witnesses.

10. The major contested issues on which the Commission received testimony from the parties are as follows:

- 1) ownership of Assets included in LMS's rate base;
- 2) amount owed by Boyne USA to LMS for provision of water for snow making;
- 3) refund of tract and pool charges assessed by LMS without an approved tariff;
- 4) use and accuracy of Single family equivalent rate developed by LMS;
- 5) appropriate rate for use in developing revenues attributable to snow making for the test year;
- 6) the appropriate revenue requirement;

7) value of LMS's rate base.

RATE BASE

11. WFP alleged through its witnesses Chaney, Mack and Maben, that LMS does not own significant portions of the assets included on LMS's balance sheet as plant-in-service. WFP presented documents purporting to show that LMS does not hold legal title to certain assets LMS uses to provide water service.

12. In 1986, John Kircher, LMS's sole shareholder, purchased 100 percent of LMS's stock from Boyne, Inc. (the successor in interest of Big Sky of Montana, Inc). Mr. Kircher asserts that pursuant to the stock purchase agreement he was given the ownership interest in all of the assets listed on the books and records of the company as of the transaction date. See LMS's Post Hearing Brief, Attachment 6, p. 3, paragraph (h), Agreement for Sale.

13. A review of the historical corporate structure employed by Big Sky of Montana, Inc. (BSI) provides some insight into how asset ownership questions developed. BSI originally initiated its property development in the Big Sky area by doing all development under its corporate name and ownership. After a time BSI segregated some of its development activities and established

special purpose affiliate and subsidiary companies. LMS, a wholly owned subsidiary of BSI, was formed for the special purpose of providing water service. When establishing the books and records of LMS, BSI assigned the assets in question to LMS for accounting and tax purposes, indicating an intent that ownership should be in the name of LMS. The assets listed on the books and records of LMS are used to provide service to subscribers connected to the water system.

14. Each entity identified by WFP as an owner of LMS assets was an associated company of LMS, having common ownership prior to the stock purchase by John Kircher. Although sloppy business practice, this is not the first time the Commission has encountered transactions between affiliates and subsidiaries that have been left incomplete. The challenge to LMS's ownership of the assets appears to arise from a failure of the common management of BSI and LMS to complete all necessary legal transactions between its affiliate and subsidiary corporations. While clear legal title to the assets may not presently rest with LMS there are other source documents that indicate LMS owns the assets.

15. For regulatory purposes the Commission accepts management's original accounting assignment and the fact that the assets are used in providing service as proof of LMS's ownership.

Even if legal ownership of the assets is in question, the asset value should be included in the revenue requirement calculation of the utility. The courts, not the Commission should decide legal ownership and title. If it is determined that LMS does not have legal title to all the assets in question the Commission will adjust the LMS rate base.

16. WFP also contends that approximately \$1,024,458 (\$1,061,524 - \$37,066, WFP Brief p. 13) of LMS's claimed plant-in-service investment is actually contributions in aid of construction (CIAC). WFP indicates that the source of this investment was LMS's parent company BSI which constructed the water system as part of its development to support sales of property in the area. WFP alleges that the water system costs were recovered by BSI through the sale price of the properties.

17. MCC provided testimony establishing a rate base for LMS of \$433,615. The rate base calculation includes the investment contested by WFP, indicating that MCC's witness, after reviewing the books and records of LMS, believes that the source of funds was other than CIAC.

18. There is no evidence on the record to support WFP's allegation that water system costs were recovered by BSI. The investment capital claimed by WFP to be CIAC could just as easily

be equity capital infused in LMS by its parent company. The Commission rejects WFP's argument that \$1,024,458 of LMS's claimed plant value are CIAC.

19. WFP also suggested an alternative rate base valuation: that the plant value for LMS should be the 1986 purchase price of \$100,000 less accumulated depreciation. WFP made the following argument:

In summary, WFP maintains that the current rate base of the Applicant should be no greater than \$100,000, less accumulated depreciation since 1986 plus a reasonable allowance for working capital employed in operations (see attached exhibits 2 and 3 for WFP calculation of LMS total asset base and annual revenue according to current potential customer list and the 1980 tariff).

WFP opening brief, p. 14.

20. The Commission rejects WFP's proposal to substitute the stock purchase price for original cost investment in utility assets. The Commission has never substituted a stock value for the original cost of plant dedicated to public service. The value of a utility's stock does not necessarily equal the value of the assets employed in the provision of service. A utility's stock price represents only one component of the capitalization needed to support plant value. Further, there may be legitimate

reasons why the selling price of stock is discounted or sold at a premium.

21. The Commission finds LMS's rate base to be \$433,615.

COST OF CAPITAL AND CAPITAL STRUCTURE

22. MCC witness Buckley proposed the following capital structure and related costs:

<u>Description</u>	<u>Ratio</u>	<u>Cost</u>	<u>Weighted Cost</u>
Equity	50.00%	12.00%	6.00%
Debt	<u>50.00%</u>	6.00%	<u>3.00%</u>
	100.00%		
Composite Cost of Total Capital			9.00%

This was the only capital structure and cost of capital presentation made to the Commission.

23. Mr. Buckley stated that he proposed the above hypothetical capital structure because it was similar to those adopted by the Commission in other recent water rate proceedings. The capital structure was not challenged by any party and it is similar to those accepted by the Commission in other proceedings. The Commission finds the proposed capital structure reasonable.

24. The cost of debt, or interest, component proposed by MCC is the actual cost of debt being charged LMS. No party

challenged the reasonableness of the actual debt cost presented by MCC. The Commission accepts the cost of debt proposed by MCC.

25. The cost of equity proposed by MCC is the last authorized cost allowed by the Commission in a water rate proceeding.

See In the Matter of the Application of Mountain Water Company..., Docket No. 92.4.19, Order No. 5625b. MCC's proposed cost of equity capital was not challenged by any party participating in the proceeding. Although the cost of equity capital was not challenged the Commission finds that MCC's proposal should be rejected.

26. MCC's proposed cost of equity assumes LMS has demonstrated an ability to operate efficiently. For reasons explained below, LMS is not an efficient utility operation. Because LMS is not efficiently operated or managed it should not be authorized a return that assumes that it is. See, e.g., PUR Digest, 3d Series, Return, '36.

27. LMS should be provided some incentive to operate efficiently or it will continue its shoddy operation. Authorizing a lower return on equity will reduce the amount available for distribution to the equity investor. This should provide management with an incentive to operate more efficiently, knowing that

efficient operations will translate to improved prospective earnings in future rate cases.

28. Calculating return on equity is somewhat subjective. Because it is subjective, parties generally present to the Commission a range of acceptable returns. The range is usually 200 basis points (2%). See, e.g., In the Matter of the Application of the Montana Power Company..., Docket No. 93.6.24, Order No. 5709d. Because LMS has a multitude of problems that need to be resolved before it is an efficient utility operation, the Commission finds that LMS needs a significant incentive to improve its operation. Therefore, the Commission authorizes LMS a return on equity of 10.0 percent.

29. The Commission finds the following capital structure and composite cost of total capital to be reasonable:

<u>Description</u>	<u>Ratio</u>	<u>Cost</u>	<u>Weighted Cost</u>
Equity	50.00%	10.00%	5.00%
Debt	<u>50.00%</u>	6.00%	<u>3.00%</u>
	100.00%		
Composite Cost of Total Capital			8.00%

Operating Revenues

30. LMS proposed total test period operating revenues of \$133,557. In prefiled testimony MCC proposed an adjustment increasing the operating revenues of LMS to \$147,024 to reflect customer billings not previously included in LMS's revenue calculation. At the hearing LMS accepted the proposed adjustment increasing its revenues by \$13,467.

31. It was alleged by WFP and admitted by LMS, that over the last 14 years it has provided water to Boyne, Inc. for snow making at no charge. During the period 1980 through 1986, LMS was a wholly-owned subsidiary of Boyne, Inc. LMS's provision of water service to Boyne at no charge represents another failure on the part of common management to recognize the separate legal and business interests of the parent and subsidiary corporations. LMS's illegal provision of free service to Boyne created a financial and operating benefit for the parent and inflicted financial harm on LMS because the costs of providing the service were not recovered.

32. During the period 1987 through 1993, LMS was wholly owned by John Kircher and Boyne had no direct control over LMS.

Boyne's interests, however, continued to be considered and protected under Mr. Kircher's ownership. Mr. Kircher owns stock in Boyne, Inc. (a closely held family corporation), is an officer

of Boyne, Inc., and manages Boyne's Big Sky operations. The Commission can only conclude that the provision of free water to Boyne continued because of the interlocking directorate and management. This circumstance made and makes it impossible for Boyne and LMS to have arms length transactions.

33. Three areas of dispute exist regarding LMS's provision of snow making water to Boyne, Inc. They are: (1) the appropriate rate to be assessed snow making water; (2) the annual quantity of water provided; and (3) whether the 14 years of uncollected revenue should be considered in LMS's current revenue requirement.

34. WFP asserts that LMS should calculate the revenue due from Boyne using the embedded cost of providing water service. As calculated by LMS in its application this rate would be 60 cents per 1,000 gallons. WFP argues that Boyne should be responsible for payment of the same rate as other similarly situated subscribers connected to the system during the time service was provided.

35. LMS on the other hand argues that the rate assessed Boyne for snow making water should be calculated at the incremental cost of providing that service. LMS asserts that Boyne, as a bulk user, did not impose the same costs on the system as other

subscribers, especially in the area of general and administrative costs. As testified to by LMS's witnesses the primary incremental expense is electrical expense for pumping. LMS's witnesses indicated that on a volumetric basis the incremental electrical cost for snow making water was approximately 2.5 cents per 1,000 gallons.

36. In a settlement agreement, entered between LMS and Boyne, Inc., LMS doubled the calculated incremental cost and proposed a rate of 5.0 cents per 1,000 gallons. LMS stated that it believed the settlement rate reflected recovery of all reasonable costs, including G&A costs and depreciation on pumps.

37. Section 69-3-305, MCA, forbids the granting of a rebate, concession or special privilege that has the effect of changing rates from those on file and approved by the Commission.

There was no rate on file with the Commission that could have reasonably been construed as applicable to the water service provided Boyne. Since no rate existed the Commission must discuss the settlement and acceptability of the settlement rate in terms of the granting of a concession as measured against the rate expectations imposed on other subscribers by the applicable tariffs.

38. The settlement agreement entered into by LMS and Boyne has the effect of making a cost rate available to Boyne that was not available to other subscribers. If the Commission were to accept the agreement as proposed it would be condoning and perpetuating preferential rate treatment for Boyne. At the time Boyne accepted and received water service from LMS, LMS had rates on file designed to recover its fully distributed embedded cost of service. If Boyne thought the rate design determined reasonable by the Commission was too high for the service being provided it either should not have accepted service or it should have requested that LMS make a rate filing. Any revenues imputed should be calculated at the approved volumetric cost rate of 60 cents per 1,000 gallons, as calculated by LMS.

39. LMS did not maintain records of actual water consumed by Boyne in its snow making activities. Because LMS failed to maintain consumption records the volumes of water consumed in each of the years LMS provided service had to be reconstructed using estimates. The estimation procedures of each of the parties is described in their testimonies and the Commission will not restate them here. LMS estimated the total volume of water provided during the 14 year period at 81,848,800 gallons; WFP estimated the total volume at 320,000,000 gallons.

40. Both of the witnesses providing estimated volumes were professional engineers who were qualified to make such calculations. Selecting which estimate to use is a judgement call by the Commission. As with any estimate there is a degree of professional subjectivity that enters into the calculation and the subjective considerations must be plausible and supportable.

41. WFP's witness Hanan testified that he calculated that during the period 1980 through 1990 LMS provided Boyne with 25,000,000 gallons annually for snow making operations. LMS's witness Kircher testified that during the first 5 years of the snow making operation Boyne used approximately 10 snow guns that consumed 5 to 6 gallons per minute. Based on this equipment description, for Boyne to have consumed 25,000,000 gallons annually the snow making equipment would have had to operate continuously for 289 days per year. This is not reasonable.

42. LMS calculated that during the period 1980 through 1990 it provided Boyne with 5,760,000 gallons annually. Based on the equipment description in the preceding finding of fact this equates to approximately 66 days of continuous operation, which is reasonable. For purposes of determining the volume of water consumed by Boyne during the period 1980 through 1990 the Commission accepts LMS's estimate.

43. WFP's witness Hanan testified that during the period 1991 to 1993 he calculated the snow making volume to be 15,000,000 gallons annually. LMS's witness Kircher testified that the company calculated that it provided Boyne approximately 13,000,000 gallons in 1993 and approximately 9,000,000 gallons in 1992 and 1991.

44. In 1990 a new pump capable of providing 600 to 650 gallons of water per minute to the snow making operation was installed. Operating at 600 gallons per minute this pump could provide the snow making operation with 15,000,000 gallons in approximately 17 days of continuous operation. The Commission finds that the 15,000,000 gallon estimate provided by WFP is reasonable.

45. The Commission finds that LMS provided Boyne with a total of 108,360,000 gallons of water during the period 1980 through 1993.

46. WFP argues that the Commission should compel LMS to bill Boyne for the total volume of water consumed in the snow making operation. Pursuant to Section 69-3-221, MCA, a utility can collect for services not billed for a six month period prior to the time the billing error is discovered. However, this section is limited to collecting amounts that would have been

billed under the utility's approved tariffs. Since no approved tariff exists for the service provided, this statute is not applicable.

47. LMS has admitted providing free water service to Boyne for snow making. The provision of this service is a violation of Section 69-3-305, MCA. The evidence indicates LMS knowingly provided free service to Boyne. This service would almost certainly not have been provided free of charge if LMS and Boyne were not affiliated companies or, after LMS's sale to Mr. Kircher, directly influenced by the interests of Boyne.

48. The Commission does not have the legal authority to compel Boyne to pay LMS for the water service it received. There is, however, no statutory prohibition against the Commission imputing the 14 years of lost revenues to LMS as part of the ratemaking process. These revenues should have been collected and would have benefited LMS and its subscribers.

49. The Commission directs LMS to compute the charges that should have been assessed and collected from Boyne during the period 1980 through 1993, using a volume of 108,360,000 gallons and a rate of \$0.60 per 1,000 gallons. LMS shall reflect this charge as an operating revenue and amortize the amount to operat-

ing revenues over a three year period. LMS shall calculate interest on the balance at the rate of 10 percent per year.

POOL AND TRACT CHARGES

50. The Commission received numerous complaints from condominium associations alleging that LMS has been assessing an illegal charge for an extended period of time. The associations allege that LMS has been assessing a "tract" charge on a quarterly basis since at least 1978 and a "pool" charge on a quarterly basis since 1991. The information provided by the associations indicates that prior to 1980 the quarterly "tract" charge was \$15 and after that date it was \$72. The information further indicates that the "pool" charge implemented in 1991 was \$72 per quarter. The associations request that the Commission order LMS to refund the amounts collected under these charges with interest.

51. The "pool" and "tract" charges are not part of the approved tariff. LMS has admitted that the current tariffs do not contain a provision for the charges assessed but argues that it should not be required to refund the charges. LMS's defense for assessment of the charges is that it provided water service to the various associations for uses not covered by the tariff

(outdoor uses and pool filling). LMS asserts that the associations took and accepted the non-tariffed service and used the water supplied by LMS for their benefit and, therefore, LMS is entitled to reasonable compensation.

52. LMS's argument that it should be allowed to collect for services not previously considered in its cost of service is without merit. A specific charge for a service is not required in a rate design if the cost of providing the service is considered in the approved rates. The rates approved in LMS's last general rate application would have included costs associated with outside use and pools to the extent those uses existed at the time. The approved rates were designed to allow LMS an opportunity to recover all costs of operating the utility, including swimming pool and outside use costs. If the previously approved rates were inadequate LMS's recourse was not to unilaterally establish a new charge but to file a rate application with the Commission. A utility is not entitled to revenues generated by rates not approved and on file with the Commission. Section 69-3-305(1)(b), MCA.

53. The Commission finds LMS should refund all "pool and tract" charges assessed and collected, with interest, to its subscribers. LMS shall refund the "pool and tract" charges to

its subscribers by amortizing the calculated refund to operating revenues over a three year period. The Commission has insufficient information to quantify the appropriate amount to be refunded. The utility shall review its records dating back to 1978 and prepare an itemized listing by customer account of all billings and collections for "pool and tract" charges. LMS shall calculate interest on the balance at the rate of 10 percent per year. LMS shall complete this listing within two weeks of the service date of this order.

54. Once LMS has compiled its listing it shall present the listing to the billed party for review and concurrence. Each billed party has ten days from receipt of the listing to complete its review and object to LMS's calculation. If a party does not object within the 10 days allowed, LMS's calculation shall be deemed accurate. If a dispute as to accuracy arises the parties should first attempt to resolve the matter between themselves. If the parties cannot resolve the dispute they may present the matter, in writing, to the Commission for resolution.

Operation and Maintenance Expenses

55. LMS proposed total test period operating expenses of \$307,735. MCC proposed adjustments decreasing the operating

expenses of LMS by \$32,857. At the hearing LMS accepted the proposed adjustments.

56. For Mr. Kircher's part-time participation in the operation of the utility LMS has included a salary amount of \$15,000 annually. During cross-examination it was established that this salary amount when converted to a full-time equivalent approximates \$125,000 annually.

57. Various public witnesses testified about customer service problems, such as LMS's failure to return phone calls, indifferent treatment during contacts, and failure to respond to written billing complaints or service inquiries. The testimony indicated that lack of interest in customer service was endemic.

58. Mr. Kircher, as president and chief operating officer, is in charge of managing and overseeing all aspects of LMS's operations. Therefore, it is his responsibility to ensure that all utility obligations are discharged. Customers of LMS demonstrated that the customer service function of the company is woefully inadequate and unresponsive. Other testimony regarding financial condition, administrative failures, customer service relationships and service-related problems of LMS reveal that management has been derelict in fulfilling its obligations. It would be imprudent to reward Mr. Kircher with the full compensa-

tion requested given the managerial failures documented in this proceeding. The Commission finds it appropriate to adjust the amount of compensation to be recovered in rates for Mr. Kircher's position.

59. The Commission finds that at present Mr. Kircher's responsibilities are comparable to that of the system engineer and, therefore, is entitled to no greater compensation than allowed for that position. The compensation included in this case for the system engineer as a full-time employee is \$35,700.

The Commission finds that Mr. Kircher should be allowed compensation of \$4,300 annually for his part-time participation in the operation of LMS ($15,000/125,000 \times 35,700 = 4,284$).

60. The Commission finds LMS test period operating expenses to be \$264,178 ($307,735 - 32,857 - 10,700 = 264,178$).

Rate Design

61. LMS has proposed converting from its present uniform flat rate for its various customer classifications to a variable flat rate, using a single family equivalent (SFE) to develop the monthly charge for a specific connection. The accuracy of LMS's SFE count, which forms the basis for calculating the single

family rate and multiples thereof, has been in dispute since the outset of this proceeding.

62. At the public hearing LMS witnesses testified that they had not yet completed the SFE count and that it still needed to be "fine tuned." The "fine tuned" SFE count was submitted as the Applicant's late-filed Exhibit A-7. LMS's late-filed exhibit A-7 indicates that the inventory of facilities produced a total of 2,268.14 SFE's.

63. In its post-hearing brief WFP criticizes LMS's late-filed SFE count. WFP points out what it perceives to be errors or omissions in LMS's SFE count but does not provide a revised total SFE number based upon that review. WFP also argues that the SFE rate design was inequitable. WFP asserts that the SFE system is inequitable because in some instances the facility and property descriptions used to determine potential water demand at a location have no correlation to the actual consumption.

64. The Commission does not agree with WFP's assertion that the proposed SFE rate design is inequitable. WFP asserts that Big Sky is a destination resort that has erratic individual occupancy patterns. WFP argues that as a result of these erratic occupancy patterns consumers who use very little water will have larger bills under the SFE rate design than consumers who use

more. The SFE rate design attempts to quantify the potential demands that may be imposed on the system by a particular connection rather than identifying actual consumption. The water utility's plant-in-service must be capable of meeting the potential instantaneous demands imposed on the system by its various connections. Therefore, it is not unreasonable on a flat rate design system to develop rates based on a demand criterion. Further, the proposed rate design minimizes the revenue burden on year-round consumers of paying the cost of maintaining service availability for recreational dwellings.

65. The Commission shares WFP's concern about the accuracy of LMS's SFE count in late-filed Exhibit A-7. The SFE count prepared by LMS has been revised upward on several occasions. Having proposed use of the SFE rate design it was the responsibility of LMS to produce an accurate SFE count. Although there appear to be errors and omissions in the count the Commission believes the SFE rate design is superior to the uniform flat rate system previously in place. WFP's critique of the final SFE count supports the conclusion that LMS underestimated the SFE's on its system. Therefore, the Commission finds it appropriate to increase the number of SFE's used to calculate the SFE rate.

66. As stated previously the SFE count has been amended upward on several occasions. The actual error rate in LMS's final count was not quantified by WFP. To ensure that consumers are insulated from any financial harm by the conversion to an SFE rate design the Commission will increase the SFE count by 15 percent. A 15 percent increase in the final SFE should ensure that an adequate number of SFE's has been included. The Commission finds that LMS has 2,608 SFE's on its system.

67. At the hearing West Fork Meadows (WFM) complained about LMS's billing procedure and requested that the Commission establish a bulk rate for master meter customers such as WFM. Currently LMS issues a flat rate bill to each of the consumers connected to the WFM water system. WFM alleges that consumers on the WFM system are not LMS's customers. WFM stated that consumers on the system are members of the WFM water user association and, therefore, any billing for service should be made to the association. WFM further alleged that when WFM connected to the LMS water system it was to have water delivered and billed by meter measurement.

68. The testimony indicates WFM, not LMS, constructed the water distribution facilities within the boundaries of WFM. The testimony also shows that WFM is responsible for the operation

and maintenance of the facilities from the point of interconnect with LMS. LMS delivers water to a pipe connecting WFM's 145,000 gallon water tank that distributes water to consumers in the WFM area. LMS's obligations to deliver water and maintain facilities ends at the WFM pipe interconnecting the two systems. Since LMS has no obligation beyond the point of the interconnection it should be issuing a single bill to WFM.

69. ARM 38.5.2508 provides that any consumer desiring to receive water by meter measurement may do so by requesting installation of a meter by the utility. WFM already has a meter in place and could receive service as a metered customer if LMS had approved metered rates. The Commission has not approved a metered rate for LMS and the cost of service information in this Docket is inadequate for the Commission to establish a metered rate. In its next rate filing before the Commission, LMS shall provide cost of service information adequate for the Commission to establish metered rates. On a prospective basis, LMS shall issue a single flat rate bill to WFM based on the SFE rate design.

Revenue Requirement

70. Until LMS provides the Commission with revised information and schedules as outlined above, the Commission is unable to determine the appropriate revenue increase to be authorized. LMS should provide the Commission a revised revenue requirement calculation in conformance with the findings herein and the time frames contained in this order. Within two weeks of receipt of the revised information the Commission will issue a final revenue requirements order.

Discussion

71. Since its inception LMS has operated with a disregard for good business practices and its statutory obligations as a public utility. The record is replete with LMS's business and regulatory failings. Most of the failings noted in this order are easily corrected by simply implementing sound business and regulatory practices.

72. LMS should be operated as an independent corporation and take those actions that are in the best interests of itself and its ratepayers. If the present ownership and management cannot detach itself from the influence of Boyne's corporate interests then it should divest its utility holdings.

73. Based on extraordinary circumstances, this Commission has ordered a utility to put itself up for sale. See In the Matter of the Butte Water Company..., Docket No. 90.12.93, Order No. 5536a. If LMS continues to operate as it has historically, ignoring public utility obligations and good business practices, this Commission will consider a proceeding to issue such an order.

CONCLUSIONS OF LAW

1. The Applicant, Lone Mountain Springs Water Company, is a public utility as defined in Section 69-3-101, MCA. The Montana Public Service Commission properly exercises jurisdiction over Applicant's rates and service pursuant to Section 69-3-102, et seq., MCA.

2. The Commission has provided adequate public notice and an opportunity to be heard as required by Section 69-3-303, MCA, and Title 2, Chapter 4, MCA.

3. The rates and rate structure approved in this order are just and reasonable. Sections 69-3-201, and 69-3-330, MCA.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

Lone Mountain Springs Water Company shall file revised information and schedules as provided herein. These schedules shall be filed within the time frames outlined in Findings of Fact Nos. 53 an 54.

DONE IN OPEN SESSION at Helena, Montana, this 22nd day of August, 1994, by a vote of 3 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ANDERSON, Chairman

DAVE FISHER, Commissioner

NANCY MCCAFFREE, Commissioner

ATTEST:

Ann Purcell
Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.